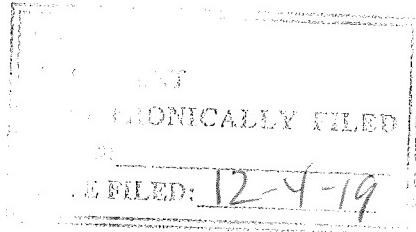


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOSE GUADALUPE, :
Petitioner, :
: :
v. :
: :
SUPERINTENDENT, Upstate Correctional :
Facility, :
Respondent. :
-----X



ORDER ADOPTING
REPORT AND
RECOMMENDATION

17 CV 7832 (VB)

Briccetti, J.:

Before the Court is Magistrate Judge Paul E. Davison's Report and Recommendation ("R&R"), dated May 20, 2019 (Doc. #23), on Jose Guadalupe's petition for a writ of habeas corpus. Judge Davison recommended the Court deny the petition in its entirety.¹

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge's report and recommendation, but they must be "specific[,] written," and submitted within fourteen days after being served with a copy of the recommended disposition, Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1), or within seventeen days if the parties are served by mail. See Fed. R. Civ. P. 6(d).

Neither party objected to Judge Davison's thorough and well-reasoned R&R. The Court further has carefully reviewed the R&R and finds no error, clear or otherwise.

¹ Upon reviewing the R&R, the Court was unable to confirm the R&R was mailed to petitioner at the correct address—that is, Great Meadow Correctional Facility, which was petitioner's address at the time of the R&R. It is petitioner's obligation to update his address on the docket. Nevertheless, to ensure petitioner received notice of his right to object to the R&R, on October 4, 2019, the Court re-mailed the R&R to petitioner at Upstate Correctional Facility, where he was and still is housed according to the DOCCS inmate locator (nysdoccslookup.doccs.ny.gov). (Doc. #24). The Court has not received any objections.

Accordingly, the Court adopts the R&R as the opinion of the Court, and the petition for a writ of habeas corpus is DENIED.

The Clerk is instructed to enter Judgment accordingly and close this case.

The Clerk is further instructed to mail a copy of this Order to petitioner at the following address:

Jose A. Guadalupe, 10-A-1753
Upstate Correctional Facility
P.O. Box 2001
Malone, New York 12953

As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c)(2); Love v. McCray, 413 F.3d 192, 195 (2d Cir. 2005).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Dated: December 4, 2019
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge